

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1057 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

STATE OF GUJARAT

Versus

GUJ.AGRO CHEMICAL MFG.CO.

Appearance:

Shri S.T. Mehta, Additional Public Prosecutor,
for the Appellant-State
Respondent No.1 served
Respondent No.2 deleted

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 26/09/96

ORAL JUDGEMENT

The order of acquittal passed by the learned Chief Metropolitan Magistrate at Ahmedabad on 23rd June 1993 in Criminal Case No. 336 of 1992 is under challenge in this appeal by leave of this Court under sec. 378 of the Code of Criminal Procedure, 1973 (the Code for brief). By his impugned order, the learned trial

Magistrate acquitted the respondents as the accused of the offence punishable under sec. 29(1)(c) read with sec. 18(1)(c) of the Insecticides Act, 1968 (the Act for brief) only on account of absence of the complainant when the matter was called out.

2. It is not necessary to set out in detail the facts giving rise to this appeal. It is sufficient to note that respondent No.1 was found by the complainant to have acted in contravention of sec. 18(1)(c) of the Act and it was found that he had incurred a penal liability therefor under sec. 29(1)(c) thereof. A complaint was thereupon filed before the learned Chief Metropolitan Magistrate at Ahmedabad charging the respondents herein with the aforesaid offence. It came to be registered as Criminal Case No. 1872 of 1991. It appears to have been renumbered as Criminal Case No. 336 of 1992. The proceeding of the case shows that the case came to be adjourned from time to time at the instance of both the sides. On certain occasions the complainant was found present also. The matter was ultimately kept on 23rd June 1993. The record of the proceeding shows that the complainant was present. He was however not present when the matter was called out for hearing. It may be noted that the learned Public Prosecutor was also present at the relevant time. It appears that the learned trial Magistrate was suffering from disposal mania. That appears to have prompted him to act with undue and unholy haste in disposing of the case by acquitting the accused on account of absence of the complainant when the matter was called out though he was present at the initial stage. The aggrieved prosecution agency has thereupon by leave of this Court invoked its appellate jurisdiction under sec. 378 of the Code.

3. I agree with learned Additional Public Prosecutor Shri Mehta in his submission to the effect that the complainant was a public servant. Since he was present at the initial stage, it can safely be presumed that he was interested in proceeding with the matter. It is possible that as a government servant he might have certain other preoccupations as well. It is possible that he might have moved away for a while to attend to some other preoccupations and was not available when the matter was called out for hearing. The court ought not to have been unduly harsh at his non-availability at the relevant time. It does not transpire from the impugned order of acquittal that the learned trial Magistrate tried to ascertain from the Public Prosecutor as to the reason for non-availability of the complainant at the relevant time. As if the learned trial Magistrate was in

a mood to dispose of the case, he found the cause handy on account of non-availability of the complainant when the matter was called out. Such approach on the part of the learned trial Magistrate was uncalled for and cannot be sustained in law. He appears to have forgotten his duty to do justice rather than to dispose of the case just in the fashion in which he has so done.

4. The duty of a judicial officer trying a criminal case even when he receives no assistance or co-operation from the prosecution agency is very well highlighted by the Division Bench of this Court in its recent ruling in the case of State of Gujarat v. Rajendrasinh Ranjansinh and others reported in III(1996) C.C.R. 152. The Division Bench ruling of this Court is binding to me sitting as a single Judge. Even otherwise, I am in respectful agreement therewith. No criminal case should ordinarily be allowed to fail just by default. In view of the aforesaid Division Bench ruling of this Court, the impugned order of acquittal has to be quashed and set aside. The matter will have to be remanded to the learned Chief Metropolitan Magistrate at Ahmedabad for restoration of the proceeding to file and for his fresh disposal according to law on its own merits in the light of the aforesaid Division Bench ruling of this Court.

5. In the result, this appeal succeeds. The judgment and order of acquittal passed by the learned Chief Metropolitan Magistrate at Ahmedabad on 23rd July 1993 in Criminal Case No. 336 of 1992 is quashed and set aside. The matter is remanded to the learned Chief Metropolitan Magistrate at Ahmedabad for restoration of the proceeding to file and for his fresh disposal according to law on merits in the light of this judgment of mine.
